11. Plaintiff says that defendant had no right to call said bond for redemption except on the payment of ten thousand gold dollars, each containing twenty-five and eight-tenths grains of gold, nine-tenths fine; and that the action of defendant and its Secretary of the Treasury did not constitute a call for redemption nor a redemption of said bond, and the obligations of said bond are still in full force and effect.

12. Plaintiff says that the defendant has publicly announced that it will not pay the First Liberty Loan Bonds in gold dollars of the standard of value existing on the date of their issuance, and has thereby forfeited, while such repudiation continues, any rights or privileges conferred on it [fol. 5] by the terms of said bonds, including the right or privilege to redeem the said bonds before the maturity thereof.

13. Plaintiff says that under authority of the Gold Reserve Act of 1934 the President of the United States, on January 31, 1934, fixed the weight of the gold dollar to be fifteen and five twenty-firsts (15-5/21) grains, nine-tenths (9/10) fine, instead of the former weight of twenty-five and eight-tenths (25-8/10) grains, nine-tenths (9/10) fine. Plaintiff says further that if its said bond is redeemable in legal tender currency, or in gold dollars of the present standard of value, said bond will be of less value to him than if it is redeemed in gold dollars of the standard of value formerly existing, or if it is irredeemable before its maturity date on June 15, 1947.

14. Plaintiff, as such executor, is the sole owner of the bond and coupon referred to and of the claim herein made, and the only person interested therein. There has been no assignment or transfer of this claim, or of any interest therein, and plaintiff is justly entitled to recover the amount herein claimed from the Government of the United States, after allowing all just credits and offsets.

15. No action upon the plaintiff's claim has been had by or before Congress, or, except as aforesaid, any Executive Department of the Government.

16. Plaintiff is, and at all times herein mentioned was a citizen of the United States, has at all times borne true allegiance to the Government of the United States, and has

not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

17. Wherefore plaintiff prays judgment against defendant in the sum of One Hundred Seventy-Five Dollars ($175.00), the face amount of the aforesaid coupon described in paragraph 2 hereof, which sum is now due and owing by [fol. 6] the United States to plaintiff, and no part of which has been paid.

18. The address of plaintiff is Burlington, Iowa; the address of the attorney for plaintiff, Robert A. Taft, is 420 Dixie Terminal Building, Cincinnati, Ohio.

Robert A. Taft, Attorney for James D. Smyth, Executor of Estate of James J. Ransom, Deceased.

Duly sworn to by Robert A. Taft. Jurat omitted in printing.

[fol. 7] SCHEDULE "A" TO PETITION

6670

1932-1947

Act Approved April 24, 1917

Liberty Loan of 1917

The United States of America

For Value Received Promises to pay to the Bearer the sum of

Ten Thousand Dollars

on the 15th day of June, 1947, with interest at the rate of three and one-half percentum per annum payable semi-annually on December 15 and June 15 in each year until the principal hereof shall be payable, upon presentation and surrender of the interest coupons hereto attached as they severally mature. The principal and interest of this bond shall be payable in United States gold coin of the present standard of value, and shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, im-

posed by authority of the United States, or its possessions, or by any State or local taxing authority. This bond shall not bear the circulation privilege. This bond is one of a series of $2,000,000,000, principal amount of bonds, of an issue of $5,000,000,000 authorized by an Act of Congress entitled "An Act to authorize an issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments and for other purposes," approved April 24, 1917. Bonds of different denominations and coupon and registered bonds, of said series, are interchangeable, in equal principal amounts, under regulations of the Treasury Department, and upon payment, if the Secretary of the Treasury shall require, of a charge not exceeding $1 for each new bond issued. All or any of the bonds of the series of which this is one may be redeemed and paid at the pleasure of the United States on or after June 15, 1932, or on any semi-annual interest payment date or dates, at the face value thereof and interest accrued at the date of redemption, on notice published at least three months prior to the redemption date, and published thereafter from time [fol. 8] to time during said three months period as the Secretary of the Treasury shall direct. If in any case less than all of the bonds of said series are to be redeemed, the bonds to be redeemed will be determined by lot by such method as may be prescribed by the Secretary of the Treasury. From the date of redemption designated in any such notice interest on the bonds called for redemption shall cease, and all coupons thereon maturing after said date shall be void. If any subsequent series of bonds (not including United States certificates of indebtedness and other short term obligations) shall be issued by the United States at a higher rate of interest than three and one-half percentum per annum before the termination of the war between the United States and the Imperial German Government, the date of such termination to be fixed by proclamation of the President of the United States, the holder hereof shall have the privilege, at any time within six months after the issue of bonds of such subsequent series, the date of such issue to be fixed by prior public announcement by the Secretary of the Treasury, of converting this bond at par, upon presentation and surrender hereof with all unmatured coupons at the Treasury Department, Washington, or at such other agencies as the

Secretary of the Treasury may hereafter designate for the purpose, and upon adjustment of accrued interest to the date of conversion, into an equal par amount of bonds bearing such higher rate of interest, and substantially identical with the bonds of such subsequent series except that the bonds issued upon such conversion shall be identical with the bonds of the present series as to maturity of principal and interest, and terms of redemption.

6670.

Washington, D. C., June 15, 1917.

W. G. McAdoo, Secretary of the Treasury.

Recorded —— Examined ——.

Houston B. Teehee, Register of the Treasury.

Twenty-four Coupons due December 15, 1935, to June 15, 1947, attached.

[fol. 9] SCHEDULE "B" TO PETITION

Liberty Loan

1917

Department Circular No. 78

Loans and Currency

Treasury Department,
Office of the Secretary,
Washington, May 14, 1917.

The Secretary of the Treasury invites subscriptions at par and accrued interest from the people of the United States of America for $2,000,000,000 of the 15/30 Year 3½ Per Cent Gold Bonds of an issue authorized by Act of Congress approved April 24, 1917.

Description of Bonds

Bearer bonds, with interest coupons attached, will be issued in denominations of $50, $100, $500, and $1,000. Bonds registered as to principal and interest will be issued in denominations of $100, $500, $1,000, $5,000, $10,000, $50,000 and $100,000. Provision will be made for the interchange of bonds of different denominations and of coupon and registered bonds, upon payment, if the Secretary of the

Treasury shall require, of a charge not exceeding $1 for each new bond issued upon such exchange. Transfers of registered bonds and exchanges of registered and coupon bonds and of bonds of different denominations will not be made until October 1, 1917, or such later date as may be designated by the Secretary of the Treasury.

The bonds will be dated June 15, 1917, and will bear interest at the rate of 3½ per centum per annum from that date, payable semi-annually on December 15 and June 15. The bonds will mature June 15, 1947, but the issue may be redeemed on or after June 15, 1932, in whole or in part, at par and accrued interest, on three months published notice, on any interest day; in case of partial redemption the bonds to be redeemed to be determined by lot by such method as may be prescribed by the Secretary of the Treasury. The principal and interest of the bonds will be payable in United [fol. 10] States gold coin of the present standard of value, and the bonds will be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States or its possessions, or by any State or local taxing authorities. The bonds will not bear the circulation privilege, but will be receivable as security for deposits of public money.

If any subsequent series of bonds (not including Treasury certificates of indebtedness and other short-term obligations) shall be issued by the United States at a higher rate of interest than three and one-half per centum per annum before the termination of the war between the United States of America and the Imperial German Government (the date of such termination to be fixed by a proclamation of the President of the United States), the holders of any of the bonds of the present issue shall have the privilege of converting the same, within such period and upon such further terms and conditions covering matters of detail as the Secretary of the Treasury may prescribe, into an equal par amount of bonds bearing such higher rate of interest and substantially identical with the bonds of such new series, except that the bonds issued upon such conversion are to be identical with the bonds of the present series as to maturity of principal and interest and terms of redemption. * * *.

W. G. McAdoo, Secretary of the Treasury.

SCHEDULE "C" TO PETITION

The United States of America

Will pay to bearer One Hundred and Seventy Five Dollars $175.00 for six months' interest due on the fifteenth day of Dec., 1935, on $10,000 3½ per cent bond of Liberty Loan of 1917.

Houston B. Teehee, Register of the Treasury.

6670.

[fol. 11] SCHEDULE "D" TO PETITION

To Holders of First Liberty Loan Bonds of 1932-47, and Others Concerned:

Public notice is hereby given:

1. All outstanding First Liberty Loan bonds of 1932-47 are hereby called for redemption on June 15, 1935. The various issues of First Liberty Loan bonds (all of which are included in this call) are as follows:

First Liberty Loan 3½ percent bonds of 1932-47 (First 3½'s), dated June 15, 1917;

First Liberty Loan Converted 4 percent bonds of 1932-47 (First 4's), dated November 15, 1917;

First Liberty Loan Converted 4¼ percent bonds of 1932-47 (First 4¼'s), dated May 9, 1918; and

First Liberty Loan Second Converted 4¼ percent bonds of 1932-47 (First-Second 4½'s), dated October 24, 1918.

2. Interest on all such outstanding First Liberty Loan bonds will cease on said redemption date, June 15, 1935.

3. Full information regarding the presentation and surrender of First Liberty Loan bonds for redemption under this call will be given in a Treasury Department circular to be issued later.

4. Holders of First Liberty Loan bonds now called for redemption on June 15, 1935, may, in advance of that date, be offered the privilege of exchanging all or any part of their called bonds for other interest-bearing obligations of the United States, in which event public notice will hereafter be given.

Henry Morgenthau, Jr., Secretary of the Treasury.

Treasury Department, Washington, March 14, 1935.

[fol. 12] SCHEDULE "F" TO PETITION

Redemption of First Liberty Loan Bonds

1935

Department Circular No. 535

Public Debt Service

Treasury Department,
Office of the Secretary,
Washington, April 22, 1935.

To Holders of First Liberty Loan Bonds of 1932-47, and Others Concerned:

I. Notice of Call for Redemption Before Maturity

On March 14, 1935, the following public notice of call for redemption was given:

To Holders of First Liberty Loan Bonds of 1932-47, and Others Concerned:

Public notice is hereby given:

1. All outstanding First Liberty Loan bonds of 1932-47 are hereby called for redemption on June 15, 1935. The various issues of First Liberty Loan bonds (all of which are included in this call) are as follows:

First Liberty Loan 3½ percent bonds of 1932-47 (First 3½'s) dated June 15, 1917;

First Liberty Loan Converted 4 percent bonds of 1932-47 (First 4's), dated November 15, 1917;

First Liberty Loan Converted 4¼ percent bonds of 1932-47 (First 4½'s), dated May 9, 1918; and

First Liberty Loan Second Converted 4¼ percent bonds of 1932-47 (First-Second 4¼'s), dated October 24, 1918.

2. Interest on all such outstanding First Liberty Loan bonds will cease on said redemption date, June 15, 1935.

3. Full information regarding the presentation and surrender of First Liberty Loan bonds for redemption under this call will be given in a Treasury Department circular to be issued later.

4. Holders of First Liberty Loan bonds now called for redemption on June 15, 1935, may, in advance of that date, [fol. 13] be offered the privilege of exchanging all or any part of their called bonds for other interest-bearing obligations of the United States, in which event public notice will hereafter be given.

Henry Morgenthau, Jr., Secretary of the Treasury.

Treasury Department, Washington, March 14, 1935.

* * * * * * *

III. Rules and Regulations Governing Redemption of First Liberty Loan Bonds

Pursuant to the call for redemption, as set forth in Section I of this circular, the following rules and regulations are hereby prescribed to govern the presentation and surrender of First Liberty Loan bonds for redemption on June 15, 1935:

1. Payment of called bonds on June 15, 1935.—Holders of any outstanding First Liberty Loan bonds will be entitled to have such bonds redeemed and paid at par on June 15, 1935, with interest in full to that date. After June 15, 1935, interest will not accrue on any First Liberty Loan bonds.

2. Presentation and surrender of coupon bonds.—First Liberty Loan bonds in coupon form should be presented and surrendered to any Federal Reserve bank or branch, or to the Treasurer of the United States, Washington, D. C., for redemption on June 15, 1935. The bonds must be delivered at the expense and risk of holders (see Par. 8 of this section) and should be accompanied by appropriate written advice (see Form P. D. 1435 attached hereto). Checks in payment of principal will be mailed to the address given in the form of advice accompanying the bonds surrendered.

3. Coupons dated June 15, 1935, which become payable on that date, should be detached from any First Liberty Loan bonds before such bonds are presented for redemption on June 15, 1935, and such coupons should be collected in regular course when due. All coupons pertaining to such bonds bearing dates subsequent to June 15, 1935, must be attached to any such bonds when presented for redemption,

provided, however, if any such coupons are missing from bonds so presented for redemption the bonds nevertheless [fol. 14] will be redeemed but the full face amount of any such missing coupons will be deducted from the payment to be made on account of such redemption, and any amounts so deducted will be held in the Treasury to provide for adjustments or refunds on account of such missing coupons as may subsequently be presented.[1]

4. Presentation and surrender of registered bonds.—First Liberty Loan bonds in registered form must be assigned by the registered payees or assigns thereof, or by their duly constituted representatives in accordance with the general regulations of the Treasury Department governing assignments, in the form indicated in the next paragraph hereof, and thereafter should be presented and surrendered to any Federal Reserve bank or branch, or to the Division of Loans and Currency, Treasury Department, Washington, D. C., for redemption on June 15, 1935. The bonds must be delivered at the expense and risk of holders (see Par. 8 of this section) and should be accompanied by appropriate written advice (see Form P. D. 1436 attached hereto). In all cases checks in payment of principal and final interest due will be mailed to the address given in the form of advice accompanying the bonds surrendered.

5. If the registered payee, or an assignee holding under proper assignment from the registered payee, desires that payments of the principal and final installment of interest be made to him, the bonds should be assigned by such payee or assignee, or by a duly constituted representative, to "The Secretary of the Treasury for redemption." If it is desired, for any reason, that payment be made to some other person, without intermediate assignment, the bonds should

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[1] First 4's, First 4¼'s, and First-Second 4¼'s were originally issued in temporary form. The final coupon attached to such temporary bonds became due on December 15, 1919, June 15, 1920, and December 15, 1920, respectively. The holders of any such temporary bonds will receive all past due interest to June 15, 1935, when such bonds are redeemed pursuant to the call. Any coupons now attached to such temporary bonds should be detached and collected in regular course.

be assigned to "The Secretary of the Treasury for redemption for the account of —— ——," inserting the name and address of the person to whom payment is to be made. A representative or fiduciary should not assign for payment to himself individually, unless expressly authorized to do so [fol. 15] by the instrument under which he is acting; he may, however, assign for payment to himself in his representative or fiduciary capacity.

6. Assignment in blank or other assignment having similar effect, will be recognized, but in that event payment will be made to the person surrendering the bond for redemption, since under such assignment the bond becomes in effect payable to bearer. Assignments in blank or assignments having similar effect should be avoided, if possible, in order not to lose the protection afforded by registration.

7. Final interest due on June 15, 1935, on registered bonds of the First Liberty Loan will be paid with the principal in accordance with the assignments on the bonds surrendered. Transfers and exchanges involving registered bonds will be permitted up to the close of business on May 31, 1935, but not after that date.

8. Transportation of bonds.—Bonds presented for redemption under this circular must be delivered to a Federal Reserve bank or branch, or to the Treasury Department, Washington, D. C., at the expense and risk of the holder. Coupon bonds should be forwarded by registered mail insured, or by express prepaid. Registered bonds bearing restricted assignments may be forwarded by registered mail, but registered bonds bearing unrestricted assignments should be forwarded by registered mail insured or by express. Facilities for transportation of bonds by registered mail insured may be arranged between incorporated banks and trust companies and the Federal Reserve banks, and holders may take advantage of such arrangements when available, utilizing such incorporated banks and trust companies as their agents. Incorporated banks and trust companies are not agents of the United States under this circular.

IV. Time of Presentation of Called Bonds for Redemption

1. In order to facilitate the redemption of First Liberty Loan bonds on June 15, 1935, any such bonds should be pre-

sented and surrendered in the manner herein prescribed well in advance of that date, but not before May 15, 1935. Such early presentation by holders will assure prompt payment of principal when due. This is particularly important with respect to registered bonds, for payment cannot be made until registration shall have been discharged at the Treasury Department.

[fol. 16]

2. It will expedite redemption if the bonds are presented to Federal Reserve banks, or branches, and not direct to the Treasury Department.

3. As hereinbefore provided: (1) coupons due June 15, 1935, should be detached from any permanent coupon bonds when such bonds are presented for redemption on that date, such coupons to be collected when due; and (2) final interest due on any registered bonds will be paid with the principal amount.

4. If First Liberty Loan Bonds called for redemption on June 15, 1935, are to be presented for exchange for 2⅞ percent Treasury Bonds of 1955-60, instructions given in Treasury Department Circular No. 536 should be followed; if to be presented for 1⅝ percent Treasury notes of Series A-1940, instructions given in Treasury Department Circular No. 537 should be followed; if to be presented for redemption on June 15, instructions given in this Circular should be followed.

V. General Provisions

1. Any further information which may be desired regarding the redemption of First Liberty Loan bonds under this circular may be obtained from any Federal Reserve bank or branch, or from the Treasury Department, Washington, D. C., where copies of the Treasury Department's regulations governing assignments also may be obtained.

2. As fiscal agents of the United States, Federal Reserve banks are authorized and requested to perform any necessary acts under this circular. The Secretary of the Treasury may at any time, or from time to time prescribe supplemental or amendatory rules and regulations governing the matters covered by this circular, which will be communicated promptly to Federal Reserve banks.

Henry Morgenthau, Jr., Secretary of the Treasury.

[fol. 17] II. General Traverse—Filed February 8, 1936

And now comes the Attorney General, on behalf of the United States, and answering the petition of the plaintiff herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

James W. Morris, Assistant Attorney General.

III. Argument and Submission of Case

On January 12, 1937, this case was argued and submitted on merits by Mr. Robert A. Taft, for plaintiff, and by Mr. Harry L. Jones, for defendant.

[fol. 18] IV. **Special Findings of Fact, Conclusion of Law and Opinion of the Court by Littleton, J.**—Filed May 3, 1937

Mr. Robert A. Taft for the plaintiff.

Mr. Harry L. Jones, with whom was Mr. Assistant Attorney General James W. Morris, for the defendant.

Mr. Edward First was on the brief.

Plaintiff as executor is the owner of a First Liberty Loan 3½% gold bond of the United States in the principal amount of $10,000, authorized by an Act of Congress approved April 24, 1917, and issued pursuant to Treasury Department Circular 78 of May 14, 1917. Plaintiff purchased this bond December 28, 1934, paying therefor in dollars $10,362.50 and accrued interest. The Secretary of the Treasury published notice on March 14, 1935, of the call for redemption on June 15, 1935, of the First Liberty Loan bonds, 1932-1947. In this notice of call it was stated that, pursuant to the terms of the bonds, interest would cease on June 15, 1935, the redemption date.

Plaintiff brings this suit to recover one hundred and seventy-five dollars in currency upon an alleged interest obligation for the six months' period June 15 to December 15, 1935, following the date designated for the redemption of the bond. Plaintiff insists that at the time of issuance of

the notice of call for redemption the Government did not intend to pay the bond in gold coin and, having declined [fol. 19] on December 28, 1935, when the bond was presented for payment; to pay therefor $10,000 in gold coin, the bond was and is a continuing obligation of the United States carrying with it a liability upon the interest coupon for the six months' period following June 15, 1935.

Special Findings of Fact

1. Plaintiff is the executor of the estate of James J. Ransom, deceased. December 28, 1934, he purchased a certain bond of the United States in the principal sum of $10,000 known as First Liberty Loan 3½% gold bond of 1932-1947, serial no. 6670, and paid therefor the sum of $10,362.50 and accrued interest. The bond was purchased by plaintiff from the Northern Trust Company, of Chicago, Illinois, and payment therefor was effected by entering a debt against plaintiff's account with that bank in a dollar amount equal to the purchase price. The bond is in evidence as plaintiff's exhibit 2 and is made a part hereof by reference. At the time of the purchase the bond had attached to it an interest coupon covering the period June 15 to December 15, 1935, and, also, interest coupons for subsequent six months' periods to and including June 15, 1947. The coupon for the six months' period ending December 15, 1935, is in evidence as plaintiff's exhibit 3 and is made a part hereof by reference.

The bond held by plaintiff, to which the interest coupon upon which this suit is based was attached, is one of a series of the 15-30 year 3½% gold bonds of an issue authorized by an act of Congress approved April 24, 1917, and issued pursuant to Treasury Department Circular 78 dated May 14, 1917. This Circular 78 is in evidence as exhibit 8 and is made a part hereof by reference. It provided in part as follows:

The bonds will be dated June 15, 1917, and will bear interest at the rate of 3½% per centum per annum from that date, payable semiannually on December 15 and June 15. The bonds will mature June 15, 1947, but the issue may be redeemed on or after June 15, 1932, in whole or in part, at par and accrued interest, on three months' published

notice, on any interest day; in case of partial redemption [fol. 20] the bonds to be redeemed to be determined by lot by such method as may be prescribed by the Secretary of the Treasury. The principal and interest of the bonds will be payable in United States gold coin of the present standard of value, and the bonds will be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States or its possessions, or by any State or local taxing authorities.

2. March 14, 1935, the Secretary of the Treasury issued a public notice that all outstanding First Liberty Loan Bonds of 1932-1947 were called for redemption on June 15, 1935; and on April 22, 1935, the Secretary of the Treasury issued Department Circular no. 535 prescribing rules for redemption of First Liberty Loan Bonds. This Treasury Department Circular, containing the public notice mentioned, is in evidence as exhibit 9 and is made a part hereof by reference.

3. December 28, 1935, plaintiff presented the bond, serial no. 6670, with coupons due on and before June 15, 1935, detached, to the Treasurer of the United States and demanded the redemption of the bond by the payment of 10,000 gold dollars, each containing 25.8 grains of gold, .9 fine. This demand was refused by the Treasurer but the Treasurer of the United States offered to plaintiff payment of the dollar face amount of the principal of the bond in legal tender coin or currency other than gold or gold certificates. Plaintiff refused to accept such legal tender coin or currency and retained the bond. The plaintiff in making his demand for payment of the bond did not accompany it with a "Form of Advice" as required by Treasury Department Circular 535.

Thereafter, on the same day, plaintiff presented to the Treasurer of the United States the interest coupon for the six months' period June 15 to December 15, 1935, and demanded payment thereof in the sum of $175, either in gold coin or legal tender currency. The Treasurer refused payment of the coupon on the ground that the bond to which it was attached had been called for redemption on June 15, 1935.

[fol. 21] 4. The total monetary silver of the United States on February 28, March 31, May 31, and June 30, 1935, was as follows:

Items	Feb. 28, 1935	Mar. 31, 1935	May 31, 1935	June 30, 1935
Per circulation statement:				
Standard silver dollars	$545,642,265	$545,642,265	$545,642,265	$545,642,265
Subsidiary (fractional) silver coin	309,546,227	308,778,560	313,397,788	313,423,778
Silver bullion securing certificates	221,963,409	263,337,146	306,999,772	313,308,863
Per mint and assay office accounts:				
Recoinage silver bullion (from melted coin)...	9,829,012	10,385,962	6,023,010	5,789,809
Other silver bullion, valued at $1.29 per ounce.	294,502,187	287,123,271	297,799,301	305,747,263
Total	1,381,483,100	1,415,267,204	1,466,862,136	1,483,911,978

The amount of monetary silver of the United States during the period extending from February 28 to June 30, 1935, was constantly increasing and was not at any time during such period less than $1,381,483,100.

5. Plaintiff did not on December 28, 1935, or at any other time hold a federal license to acquire, hold, or dispose of gold coin or gold bullion, and was not engaged in any business in which the use of gold coin or gold bullion was necessary. On December 28, 1935, and thereafter plaintiff owed no obligation and incurred no expenses which could not have been liquidated in legal tender currency other than gold coin. Had the plaintiff on December 28, 1935, when he presented the bond to the Treasurer of the United States for payment, received ten thousand dollars in gold coin it was his purpose and intention to send the gold coin to the Northern Trust Company as a routine deposit in the plaintiff's dollar account with that bank for which plaintiff would have received a credit of $10,000 in such account. Had plaintiff accepted the tendered proceeds of the redemption of the bond, he would have purchased therewith some other investment. On December 28, 1935, there was no other investment which plaintiff might have made in the United States with the $10,000 in gold coin that he could

not equally as well have made with $10,000 in legal tender currency.

6. On June 15, 1935, and thereafter the First Liberty Loan 3½% gold bonds of 1932-1947, dated June 15, 1917, [fol. 22] and designated in the notice of call for redemption issued by the Secretary of the Treasury on March 14, 1935, and embodied in Treasury Department Circular No. 535 of April 22, 1935, as called for redemption on June 15, 1935, were not listed on any exchange but were occasionally available in the open market and selling at not in excess of their dollar face amount and interest accrued at the date of redemption as fixed in said notice of call for redemption.

Had the First Liberty Loan 3½% bonds of 1932-47 contained no redemption provision, such bonds would have had a market value on December 28, 1934, and thereafter, of approximately 110 plus accrued interest.

Conclusion of Law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that plaintiff is not entitled to recover and the petition is therefore dismissed.

Judgment is rendered against plaintiff for the cost of printing the record herein, the amount thereof to be entered by the clerk and collected by him according to law.

Opinion

Littleton, Judge, delivered the opinion of the court:

The $10,000 First Liberty Loan bond, to which was attached the six-months' interest coupon upon which this suit is based, provided in part as follows:

The United States of America for value received promises to pay to the bearer the sum of Ten Thousand Dollars on the 15th day of June 1947, with interest at the rate of three and one-half per centum per annum payable semi-annually on December 15 and June 15 in each year until the principal hereof shall be payable; upon presentation and surrender of the interest coupons hereto attached as they severally mature. The principal and interest of this bond shall be payable in United States gold coin of the present

standard of value * * *. All or any of the bonds of the series of which this is one may be redeemed and paid at the pleasure of the United States on or after June 15, 1932, or on any semiannual interest payment date or dates [fol. 23] at the face value thereof and interest accrued at the date of redemption, on notice published at least three months prior to the redemption date and published thereafter from time to time during said three months' period as the Secretary of the Treasury shall direct. * * *. From the date of redemption designated in any such notice interest on the bonds called for redemption shall cease, and all coupons thereon maturing after said date shall be void.

The interest coupon upon which this suit is based provided as follows:

The United States of America will pay to bearer One Hundred and Seventy-Five Dollars ($175.00) for six months' interest due on the fifteenth day of Dec. 1935, on $10,000 3½% bond of Liberty Loan of 1917.

It will be seen from the above that the sole question is whether under the terms of the bond and the call for redemption thereof there was a continuing obligation on the part of the Government to pay interest subsequent to the redemption date. This question was presented and decided by this court November 9, 1936, in Dixie Terminal Company v. *United* States, 83 C. Cls. 656. Since that decision the Circuit Court of Appeals for the 4th Circuit in Machen v. United States, 87 Fed. (2d) 594, held that the owner of a First Liberty Loan 3½% gold bond was entitled to recover interest subsequent to the date on which the bonds were called for redemption by reason of the Government's refusal to pay the bonds in gold coin. Substantially the same reasons given by the court for its decision in the Machen case were urged by plaintiff and considered by this court in Dixie Terminal Company v. United States, supra. We are not persuaded by the opinion of the Circuit Court of Appeals that the reasoning and conclusion of this court in the Dixie Terminal Company case were erroneous. In that case we held that "by the agreement of the parties the obligation of the defendant to pay interest on the bond ceased upon the issuance of notice of call and passage of time to the date designated for redemption in such notice";

that the contract "required only the giving of notice of call for redemption, which was admittedly done", and that the court could not read into the bond a condition not justified [fol. 24] by the language of the contract and the well-established rule that the United States is not liable for interest, as such, without its express consent.

Plaintiff contends that the call for redemption was void for the reason that when the call was issued the Government did not intend to pay the bond in gold and that its refusal to redeem the bond, when presented, by the payment of $10,000 in gold coin, or the equivalent of the value of such gold coin, caused the interest provisions of the statute, the Treasury Department circular, and the provisions of the bond to continue to the maturity date of the bond, or until it was paid in gold coin, as an enforceable obligation of the United States. While the failure of the United States strictly to comply with the contract in respect to payment of the principal of the bond in gold coin may have given rise to a cause of action with respect to the principal, such action of the Government did not change or enlarge the specific terms of the agreement with respect to interest subsequent to June 15, 1935. Moreover, plaintiff suffered no damage by reason of the refusal of the Government to make payment in gold coin. At the time plaintiff made demand he was not engaged or authorized to engage in any business in which gold coin or gold bullion was necessary for its operation and held no license to receive or hold gold coin or gold bullion. In Perry v. United States, 294 U. S. 330, the plaintiff was offered, as plaintiff herein was tendered, legal tender currency of the face amount of the Liberty bond which had been called for redemption and, in that case, the court, in speaking of the legal consequences of this tender, said:

Plaintiff demands the "equivalent" in currency of the gold coin promised. But "equivalent" cannot mean more than the amount of money which the promised gold coin would be worth to the bondholder for the purposes for which it could legally be used. That equivalence or worth could not properly be ascertained save in the light of the domestic and restricted market which the Congress had lawfully established. In the domestic transactions to which the plaintiff was limited, in the absence of special license, determination of the value of the gold coin would necessarily

[fol. 25] have regard to its use as legal tender and as a medium of exchange under a single monetary system with an established parity of all currency and coins.

The plaintiff here has not shown or attempted to show any circumstances justifying a finding that for any reason the currency tendered was not the equivalent of gold. We think therefore that he cannot successfully urge as a basis for holding the United States liable for interest subsequent to June 15, 1935, that the tendered amount of coin was not a redemption of the bond in accordance with its terms. It seems clear that in view of the lawful regulations enacted by Congress with reference to the use, receipt, or holding of gold coin or gold bullion plaintiff would have obtained no real benefit from the tender of gold coin. In Nortz v. United States, 294 U. S. 317, 328, the court said:

> The asserted basis of plaintiff's claim for actual damages is that, by the terms of the gold certificates, he was entitled, on January 17, 1934, to receive gold coin. It is plain that he cannot claim any better position than that in which he would have been placed had the gold coin then been paid to him. But, in that event, he would have been required, under the applicable legislation and orders, forthwith to deliver the gold coin to the Treasury. * * * Had plaintiff received gold coin for his certificates, he would not have been able, in view of the legislative inhibition, to export it or deal in it. * * * It cannot be said that, in receiving the currency on that basis, he sustained any actual loss.

For these and other reasons stated in Dixie Terminal Company v. United States, supra, the court will not imply a condition in the bond to the effect that unless gold coin only is paid, interest subsequent to the redemption date shall continue. The continuation of an interest obligation, which the contract between the parties provides shall cease upon the happening of a certain event, must rest upon more than a technical breach.

The only point urged by plaintiff in this case which was not briefed by plaintiff in the Dixie Terminal Company case is that the call for redemption of the First Liberty Loan bond was void because neither of the conditions enu- [fol. 26] merated in (R. S. 3693) section 731 of Title 31 of the United States Code existed. Counsel for plaintiff

in the Dixie Terminal Company case referred to this section in oral argument but we did not discuss the section in the opinion for the reason we were of opinion that it had no important bearing upon the question presented. The section relied upon was enacted March 18, 1869, as follows:

> The faith of the United States is solemnly pledged to the payment in coin or its equivalent * * * of all the interest-bearing obligations of the United States, except in cases where the law authorizing the issue of any such obligations has expressly provided that the same may be paid in lawful money or other currency than gold and silver. But none of the interest-bearing obligations not already due shall be redeemed or paid before maturity, unless at such time United States notes are convertible into coin at the option of the holder, or unless at such time bonds of the United States bearing a lower rate of interest than the bonds to be redeemed can be sold at par in coin.

The right of the Government to call the First Liberty Loan bonds for redemption prior to maturity is governed solely by the First Liberty Loan Act of April 24, 1917, 40 Stat. 35, as amended, pursuant to which the bond held by plaintiff was issued. That act contained the provision that "The bonds herein authorized shall be in such form and subject to such terms and conditions of issue, conversion, redemption, maturities, payment, and rate and time of payment of interest, not exceeding three and one-half per centum per annum, as the Secretary of the Treasury may prescribe."

Treasury Department Circular 78, under which the First Liberty Loan bonds were issued, provided that "The bonds will mature June 15, 1947, but the issue may be redeemed on or after June 15, 1932, in whole or in part, at par and accrued interest, on three months' published notice, on any interest day; * * *." And the Liberty Bond provided that "All or any of the bonds of the series of which this is one may be redeemed and paid at the pleasure of the United States on or after June 15, 1932, or on any semi-annual interest payment date or dates, at the face value thereof and interest accrued at the date of redemption, on [fol. 27] notice published at least three months prior to

the redemption date and published thereafter from time to time during said three months' period as the Secretary of the Treasury shall direct."

We think it is clear therefore that the only terms and conditions governing the redemption of the First Liberty Loan bonds prior to maturity are those contained in the statute of 1917 authorizing their issue, the circular, and the bond. These terms and conditions have been fully complied with. The Act of March 18, 1869 (Title 31, U. S. Code, section 731), applied solely to the redemption of bonds outstanding at the time of its enactment when the dual monetary system of the United States existed. That dual system ceased to exist upon the resumption of specie payments in 1879.

Prior to the enactment of the Act of 1869 the Government issued bonds which did not expressly state the medium of payment. It had also issued United States notes (greenbacks) which were circulating at a great discount in comparison with gold and silver, also then in circulation. In the first sentence of the Act of 1869, which is here material only for historical background, the United States pledged itself (1) to pay its United States notes in coin or its equivalent, and (2) to pay its interest-bearing obligations in coin or its equivalent; unless the law authorizing issue expressly provided for payment in some currency other than gold or silver. The first part of the second sentence of the Act of 1869 quoted above, in order to protect the holders of United States notes who were not to be paid coin or its equivalent, provided that the interest-bearing obligations of the Government were not to be redeemed before maturity unless at such time the holders of United States notes could convert their notes into coin; as was stated by Robert C. Schenk, one of the House Managers in charge of the bill (Congressional Globe, March 3, 1869, p. 1879), "That is, the bonds of the United States are not to be paid before maturity, while the noteholders are to be kept without their redemption, unless the noteholders are able at the same time to convert their notes into coin." The last part of the second sentence, which provided "or unless at such time bonds of the United States bearing a lower rate of interest than the bonds to be re- [fol. 28] deemed can be sold at par in coin", was enacted in order not to make the restriction on redemption of interest-bearing obligations too burdensome and to enable

the United States to refund its outstanding obligations at a lower rate of interest should the credit of the Government warrant it, even though there had been no resumption of specie payments on United States notes.

From the above we think it is clear that the only Government bonds to which the act applied were those then outstanding, and that the Act of 1869 became obsolete and ceased to have significance when the Government resumed specie payments on its United States notes and maintained all coins and currencies at a parity of value. Moreover the word "coin" in the Act of 1869 clearly referred to silver coin as well as gold coin. At the time the First Liberty Loan bond involved in the case at bar was called for redemption and at the date set for redemption any holder of a United States note could have presented the same to the Treasury of the United States, or any fiscal agency thereof, and received in exchange therefor silver coin.

Plaintiff is not entitled to recover and the petition is dismissed. It is so ordered.

Whaley, Judge; Williams, Judge; Green, Judge; and Booth, Chief Justice, concur.

[fol. 29] V. JUDGMENT

At a Court of Claims held in the City of Washington on the 3rd day of May, A. D., 1937, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that plaintiff is not entitled to recover.

It is therefore adjudged and ordered that the plaintiff's petition be and the same is hereby dismissed.

[fol. 30] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 41,500. Court of Claims. Term No. 960. James D. Smyth, Executor of the Estate of James J. Ransom, Deceased, petitioner, vs. The United States. Petition for a writ of certiorari and exhibit thereto. Filed May 7, 1937. Term No. 960, O. T., 1936.

[fol. 31] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 1, 1937

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.